

is representing. Others involved in the transaction may recommend or offer you financial incentives to hire a particular closing attorney, but you have the final word. Prior to closing, the seller should give the closing attorney a copy of the deed to the property. Also, if there is an outstanding mortgage on the property, the seller should give the attorney any personal information needed to obtain a loan payoff figure so any existing loan(s) can be paid off in full at closing. As the buyer, you will need to give the closing attorney a copy of your contract and contact information about your lender, any inspectors, or other persons who provided services in connection with the transaction.

Since closing involves several complex phases (examination of the title, completion and explanation of legal documents, and resolution of any possible title problems), you should carefully consider having an attorney assist you throughout the process and during the closing. Also, read each closing document so you fully understand each step of your real estate transaction.

If a non-attorney is handling your closing, that person may render only administrative services related to the transaction — not give you legal advice.

**Q: What is a closing statement or “HUD-1”?**

**A:** A closing statement is a document that summarizes all funds received by you and the seller at closing, and all funds paid by you and the seller for various expenses of the transaction (real estate agent commissions, loan payoffs, fees for inspections, property taxes, etc.). For all closings involving federally insured loans, the Real Estate Settlement Procedures Act (RESPA) requires that this information be reported on a form from the federal Department of Housing and Urban Development (HUD) — a HUD-1 form.

Typically, you must pay a portion of the property taxes, the cost of all inspections, and all costs associated with the loan, title search and closing. These costs include the appraisal fee, survey, pest inspection, lender fees, fees to establish an escrow balance for homeowner’s insurance, taxes and any required private mortgage insurance, attorney fees, title insurance, and recording fees. The seller normally pays the balance due on any existing loans, his portion of the taxes, commissions to real estate agents, fees for deed preparation, cancellation of existing liens, and revenue stamps payable to the state. In most transactions, payment of these fees is negotiable between the parties. However, if you are getting a VA or FHA loan, the lender may require the seller to pay particular closing costs, such as the pest inspection.



**Q: I am being asked to put something on the HUD-1 that is different than what I agreed to. Is that ok?**

**A:** Probably not. The HUD-1 should reflect the agreement between the parties and match the terms set out in the purchase contract. You may be committing loan fraud if you make a false representation to a lender on the HUD-1, the loan application, or elsewhere in order to obtain a larger loan amount or a loan on more favorable terms than you are otherwise qualified for under the lender’s guidelines. **Loan fraud is a federal crime punishable by up to 30 years in**

**prison and \$1 million in fines.** If you are asked to do any of the following, refuse and immediately contact the North Carolina Real Estate Commission:

- create a false gift letter for down payment funds.
- make it appear you made a deposit when, in fact, you did not.
- give the seller a secret or even false or “forgivable” second mortgage.
- make payments outside of closing which are not disclosed on the HUD-1, such as additional fees paid to service providers, to the seller, or third parties.
- make a false statement that you will occupy the property.
- give false personal information about yourself to the lender.

**Q: What is “prorating”?**

**A:** Certain items (real estate taxes, some utility bills, occasionally special assessments, etc.) are prorated at closing. “Prorating” occurs when you and the seller are each responsible for a portion of an expense. For example, property taxes are assessed as of January 1 but not normally payable until the end of the year. The seller is responsible for his share of the property taxes from January 1 through the closing date. You will be responsible for the remainder of the year. Review the contract carefully to be sure you know what items, if any, will be prorated at closing.

**Q: What are special assessments?**

**A:** Local governmental units can assess property owners for certain improvements to their property such as sidewalks, sewer lines, street repairs, and drainage systems. Since these assessments run with the property, you should verify with the closing attorney before closing that there are no existing special assessments (either pending or confirmed).

**Q: If I’m a seller, when should I get my proceeds from the sale of my property?**

**A:** The closing attorney may disburse funds immediately after closing has been completed, the title has been updated, and the documents have been recorded. Often, time may not permit the closing attorney to record the documents, update title, and disburse funds, or the lender may not be able to wire the loan proceeds, all in the same day. When this happens, a “dry closing” is sometimes held with the funds being disbursed the next business day. If you are a seller, you should discuss the timing of disbursements with the closing attorney in advance so you can be aware of any possible delays. If you are a buyer, be aware that the seller may not be willing to give you possession of the property until he receives his proceeds from the sale.



**Q: What if I can’t close by the time stated on the contract?**

**A:** If your purchase contract states that “time is of the essence” as to the closing date and you fail to close on that date (regardless of the reason), you will probably be considered in breach of the contract. Consequently, if your lender fails to provide the closing package in time for closing, you may unintentionally lose your chance to purchase the property. Likewise, if the seller cannot complete a major required repair prior to the stated closing date, the seller may lose the sale.

If the contract does not have a “time is of the essence” provision and the party who is having trouble is making a good-faith effort to close, courts have allowed the contract to remain viable for a reasonable period of time after the designated closing date.

Consequently, buyers and sellers who are considering including a “time is of the essence” provision in the purchase contract should consult with their attorney to be sure they understand its full impact.

*Related reading available from the Real Estate Commission:*

- Questions & Answers on : Earnest Money Deposits
- Questions & Answers on: Condos and Townhouses
- Questions & Answers on: Home Inspections
- Questions & Answers on: Residential Subdivisions & Planned Communities
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**The North Carolina Real Estate Commission  
P.O. Box 17100  
Raleigh, North Carolina 27619-7100  
919/875-3700  
Web Site: [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us)**

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## Questions and Answers on: REAL ESTATE CLOSINGS

